

December 26, 1996
Page 7

RESOLVED, that the appropriate officers of the Corporation be, and they hereby are, authorized and empowered on behalf of, and in the name of, the Corporation to execute a plan of reorganization under chapter 11 of the Bankruptcy Code, including any and all modifications, supplements, and amendments thereto, and to cause the same to be filed in the United States Bankruptcy Court for the District of Delaware at such time as said authorized officer executing the same shall determine; and

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 be, and it hereby is, employed as attorneys for the Corporation under a general retainer; and

RESOLVED, that the appropriate officers be, and they hereby are, authorized and empowered on behalf of, and in the name of, the Corporation to retain and employ other attorneys, investment bankers, accountants, restructuring professionals, financial advisors and other professionals to assist in the Corporation's chapter 11 case on such terms as are deemed necessary, proper or desirable; and

RESOLVED, that in connection with the commencement of the chapter 11 cases by the Corporation, the appropriate officers of the Corporation be and hereby are, authorized and empowered on behalf of, and in the name of, the Corporation, to negotiate, execute and deliver a debtor-in-possession loan facility (including, in connection therewith, such notes, security agreements and other agreements or instruments as such officers consider appropriate) on such terms and conditions as such officer or officers executing the same may consider necessary, proper or desirable, such determination to be conclusively evidenced by such execution or the taking of such action, and to consummate the transactions contemplated by such agreements or instruments on behalf of the Corporation and any pertinent affiliates; and

RESOLVED, that the appropriate officers of the Corporation and any employees or agents (including counsel) designated by or directed by any such officers, be, and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation to cause the Corporation and such of its affiliates as management deems appropriate to file such definitive plans of reorganization or joint plans of reorganization as may be authorized by the Boards, and any and all authorized modifications, supplements or amendments thereto, and such other agreements, instruments and documents as may be necessary, appropriate or desirable in connection with such plans and to make such motions and other filings with the Bankruptcy Court, and do all other things, as may be or become necessary, appropriate or desirable for the successful confirmation of such plans; and

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ME 01070

Page 8

RESOLVED, that, in the judgment of the Board, it is desirable and in the best interests of the Corporation that, in connection with the Reorganization, the Corporation issue and sell to Andrews Group a number of shares of Company Common Stock, constituting approximately 80.8% of the issued and outstanding Company Common Stock after giving effect to such issuance and sale, in exchange for approximately \$365 million in cash or, in the alternative, in exchange for shares of the Class A Common Stock of Toy Biz having an equivalent value, or a combination of cash and Class A Common Stock; and

RESOLVED, that the form, terms and provisions of the Acquisition Agreement, in substantially the form attached hereto as Exhibit A, be, and the same hereby is, authorized and approved; and

RESOLVED, that in the event that Andrews Group purchases Company Common Stock in exchange for cash pursuant to and in accordance with the terms of the Acquisition Agreement, it is desirable and in the best interests of the Corporation to use such cash to acquire the shares of Class A Common Stock and Series A Preferred Stock of Toy Biz that the Corporation does not already own and which are not being delivered by Andrews Group to the Corporation pursuant to the Acquisition Agreement, and assume the obligations of Andrews Group (or an affiliate or subsidiary thereof) under (i) the Merger Agreement providing for the purchase of Series A Preferred Stock and publicly held Class A Common Stock of Toy Biz in substantially the form attached hereto as Exhibit B, (ii) the Arad Stock Purchase Agreement and (iii) the Perlmutter Stock Purchase Agreement, with such changes to any of the foregoing documents as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution or the taking of such action, and to consummate the respective transactions contemplated hereby; and

RESOLVED, that in the event Andrews Group purchases Company Common Stock in exchange for cash and assigns to the Company, in accordance with the terms of the Acquisition Agreement, the rights and obligations of Andrews Group under the Merger Agreement and under the Arad Stock Purchase Agreement and the Perlmutter Stock Purchase Agreement attached hereto as Exhibit C and Exhibit D, respectively, such rights and obligations of Andrews Group shall be accepted and assumed by the Corporation, and, the acceptance and assumption by the Corporation of the same be, and the same hereby is, authorized and approved; and

RESOLVED, that the appropriate officers of the Corporation be, and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation to negotiate, execute and deliver the Acquisition Agreement, and appropriate

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instruments of assignment and assumption with respect to each of the Arad Stock Purchase Agreement, the Perlmutter Stock Purchase Agreement and the Merger Agreement, with such changes to any of the foregoing documents as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution or the taking of such action, provided that any material change on behalf of the Corporation to any such document that would be less favorable to the Corporation shall require the approval of the Board, and to consummate the respective transactions contemplated hereby; and

RESOLVED, that the appropriate officers of the Corporation be, and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation (i) to negotiate, execute and deliver, upon or following the assumption by the Corporation of the Arad Stock Purchase Agreement and the Perlmutter Stock Purchase Agreement, the Promissory Notes contemplated thereby with such changes thereto as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution, or (ii) to execute, negotiate and deliver one or more Promissory Notes to Andrews Group on substantially the same terms and conditions as any Promissory Notes to be issued by Andrews Group to Arad and Perlmutter in connection with the consummation of the transactions contemplated by the Arad Stock Purchase Agreement or the Perlmutter Stock Purchase Agreement (the "Arad/Perlmutter Notes") with such changes thereto as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution; and

RESOLVED, that the appropriate officers of the Corporation, and any employees or agents (including counsel) designated by or directed by any such officers, be, and each hereby is, authorized and empowered to cause the Corporation and such of its affiliates as management deems appropriate to enter into, execute, deliver, certify, file and/or record, and perform, such agreements, instruments, motions, affidavits, applications for approvals or ruling of governmental or regulatory authorities, certificates and other documents, and to take such other actions, as in the judgment of such officer shall be or become necessary, proper and desirable to prosecute to a successful completion the chapter 11 cases, to effectuate the restructuring of the debt, other obligations, organizational form and structure and ownership of the Corporation and its subsidiaries consistent with the foregoing resolutions and to carry out and put into effect the purposes of the foregoing resolutions and the transactions contemplated by these resolutions, their authority thereunto to be evidenced by the taking of such actions; and

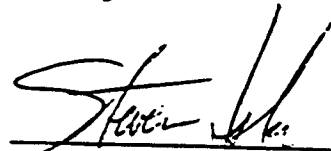
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RESOLVED, that any and all past actions heretofore taken by officers or directors of the Corporation in the name of and on behalf of the Corporation in furtherance of any or all of the preceding resolutions be, and the same hereby are ratified, approved and adopted.

Adjournment

There being no further business to come before the Meeting, a motion to adjourn the Meeting was made, seconded and passed, and the Meeting was thereupon adjourned.


Secretary

LCL-ENKOR BOARD DEC 26, 1996

B 194

ME 01073

Exhibit A
Form of the Stock Purchase Agreement between
Andrews Group Incorporated and the Corporation

B 195

ME 01074

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3 -----x

4 RONALD CANTOR, IVAN SNYDER,
5 JAMES A. SCARPONE, as Trustee of
6 the MAFCO LITIGATION TRUST,
7 Plaintiffs,

8 C.A. No.
9 97-586 (KAJ)

10 vs.

11 RONALD O. PERELMAN, MAFCO
12 HOLDINGS, INC., MACANDREWS &
13 FORBES HOLDINGS, INC., ANDREWS
14 GROUP INCORPORATED, WILLIAM C.
15 BEVINS AND DONALD G. DRAPKIN,
16 Defendants.

17 -----x

18 VIDEOTAPED DEPOSITION OF PETER A. FOWLER

19 WEDNESDAY, APRIL 19, 2006

20 HUDSON REPORTING & VIDEO, INC.

21 124 West 30th Street, 2nd Fl.

22 New York, New York 10001

23 Tel: (212) 273-9911 Fax: (212) 273-9915

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2 Videotaped deposition of PETER A. FOWLER
3 taken in the above-entitled matter before Mark
4 Iuzzolino, a Certified Shorthand Reporter (License
5 No. X101103) and Notary Public of the State of New
6 Jersey, taken at the offices of FRIEDMAN, KAPLAN,
7 SEILER & ADELMAN, LLP, 1633 Broadway, New York,
8 New York 10019, on WEDNESDAY, APRIL 19, 2006,
9 commencing at 10:03 a.m.

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2 A. Right.

3 Q. -- as banker --

4 MR. LOCKWOOD: This is not about what

5 Mr. Engelman told him, but based on his

6 experience?

7 MR. FRIEDMAN: Correct, correct.

8 Q. Well, it's actually based on both. I'm

9 asking a question about what Mr. Engelman told

10 you.

11 MR. LOCKWOOD: I think you should either

12 ask him about --

13 Q. Let me make it clear. I think it's a

14 proper question, but I'll break it down.

15 Mr. Engelman told you that the restrictions

16 were included in the indenture as part of the

17 negotiation between the issuer and the

18 underwriter. Correct?

19 A. That's correct.

20 Q. Did Mr. Engelman tell you whether it was

21 the issuer or the underwriter in this case who had

22 proposed including the restrictions in the

23 indenture?

24 A. I believe that he told me that they

25 called prospective underwriters, investment banks

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2 they dealt with, and said, "We have a need" -- as
3 they had with a variety of their companies, to
4 think about monetizing their investments, and
5 asked the underwriters for ideas. So in that
6 case, I guess -- I don't know precisely, but I
7 believe the underwriter might have put it in a
8 term sheet that he sent to the company.

9 Q. And now I'm asking a question based on
10 your experience as a banker.

11 Based on your experience, would you think
12 that, in this particular case, the underwriter
13 would have proposed including the restrictions, or
14 the issuer would have proposed including the
15 restrictions?

16 A. The normal process is, an underwriter
17 says, "Here's what we think you can do," delivers
18 a draft term sheet, and then the issuer goes
19 through ever provision and pushes and pulls,
20 depending on what he -- to get the best possible
21 deal he can as an issuer.

22 Q. My precise question is: Based on your
23 experience, would you have expected in this
24 negotiation between MacAndrews & Forbes on the one
25 hand and the underwriters on the other that the

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2 underwriters would have proposed including the
3 restrictions, or would you have expected that the
4 issuer would have proposed including the
5 restrictions?

6 A. I would have expected the underwriters
7 would have included it in a term sheet describing
8 the issue that they thought they could execute.

9 Q. And would you have expected that when
10 the issuers reviewed that term sheet, they would
11 have pushed back with respect to terms that they
12 did not like?

13 A. I would have expected them to negotiate
14 on every possible term.

15 Q. Including the restrictions?

16 A. Uh-huh.

17 Q. You have to say yes.

18 A. Yes. Sorrv.

19 Q. Now, you asked Mr. Engelman whether --

20 MR. LOCKWOOD: Can we just note for the
21 record that Mr. Fasman has entered the room?

22 MR. FRIEDMAN: It would be an honor.

23 How are you doing, Steve?

24 Q. You said you asked Mr. Engelman whether
25 they considered puts rather than the restrictions.

00197

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2 which a controlling shareholder engaged in
3 financing for its own benefit. Let's just stop
4 there for a moment. You understand that the
5 Marvel holding company note issuances were
6 financing transactions for the benefit of the
7 Marvel holding companies and their parents.
8 Correct?

9 MR. LOCKWOOD: Objection to the form.

10 A. What do you mean by "benefit"?

11 Q. Was Marvel the operating company
12 receiving any of the proceeds of the holding
13 company note issues?

14 A. Not that I'm aware of, not that I'm
15 aware of.

16 Q. And you've already testified that, as
17 far as you know, the Marvel operating company was
18 not receiving any benefits from the holding
19 company --

20 A. That's correct, uh-huh.

21 Q. -- note issuances. Correct?

22 A. That's correct.

23 Q. Is it your understanding that the
24 holding companies themselves and their parent
25 corporations would benefit from the proceeds

00198

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2 obtained upon the holding company note issuances?

3 A. Yes.

4 Q. And you are aware that at the time of
5 the holding company note issuances, the holding
6 companies were the majority shareholders in
7 Marvel, the operating company?

8 A. Yes.

9 Q. My question is: Other than these Marvel
10 holding company transactions, are you aware of any
11 transaction in which a controlling shareholder
12 engaged in financing for its own benefit with
13 promises that it would cause its public company
14 subsidiary to comply with certain covenants?

15 A. I'm not entirely sure. What I'd have to
16 do is review all the holding company issues to be
17 evaluated because I believe some of the proceeds
18 from those holding company issues did not come
19 down to the operating company. And I'd have to
20 review the other component of your question, which
21 asked: Were there financial covenants, you know,
22 restricting the operating company?

23 Q. Now, you have your report open. Is that
24 because you're looking at Exhibit 6?

25 A. Exhibit 6 might have some of that

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD CANTOR, IVAN SNYDER and JAMES
A. SCARPONE, as TRUSTEES OF THE MAFCO
LITIGATION and Successors in Interest
to the Marvel Entertainment Group,
Inc., et al.,

Plaintiffs,

vs.

97-CIV-586-KAJ

RONALD O. PERELMAN, et al.,

Defendant.

DEPOSITION OF BEVIS LONGSTRETH

New York, New York

Wednesday, May 24, 2006

Reported by:

Adrienne M. Mignano

JOB NO. 184644

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May 24, 2006

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10:00 a.m.

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Deposition of BEVIS LONGSTRETH,
held at the offices of Skadden Arps,
Four Times Square, New York, New York,
pursuant to Notice, before Adrienne M.
Mignano, a Notary Public of the State
of New York.

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A P P E A R A N C E S:

FRIEDMAN, KAPLAN, SEILER & ADELMAN, LLP
Attorneys for Plaintiffs
1633 Broadway
New York, New York 10019-6708

BY: EDWARD A. FRIEDMAN, ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Attorneys for Defendants
One Rodney Square
Wilmington, Delaware 19801

BY: PAUL J. LOCKWOOD, ESQ.
BRIAN G. LENHARD, ESQ.

ALSO PRESENT:

KAREEM CUNNINGHAM, Videographer

1
2 IT IS HEREBY STIPULATED AND AGREED,
3 by and between counsel for the respective
4 parties hereto, that the filing, sealing and
5 certification of the within deposition shall
6 be and the same are hereby waived;

7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form
9 of the question, shall be reserved to the
10 time of the trial;

11 IT IS FURTHER STIPULATED AND AGREED
12 that the within deposition may be signed
13 before any Notary Public with the same force
14 and effect as if signed and sworn to before
15 the Court.
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2 THE VIDEOGRAPHER: This is tape
3 number one of the videotaped
4 deposition of Mr. Bevis Longstreth in
5 the matter of Ronald Cantor, et al.
6 versus Ronald L. Perelman, et al., in
7 the United States District Court,
8 District of Delaware, number
9 97-CIV-586-KAJ.

10 This deposition is being held at
11 Skadden Arps, Four Times Square, New
12 York, New York on May 24, 2006 at
13 approximately 10:02 a.m.

14 My name is Kareem Cunningham from
15 the firm of Esquire Deposition
16 Services. I'm the legal video
17 specialist. The court reporter is Ms.
18 Adrienne Mignano in association with
19 Esquire.

20 Would counsel please introduce
21 themselves.

22 MR. LOCKWOOD: Paul Lockwood of
23 Skadden Arps on behalf of defendants,
24 and with me is Brian Lenhard.

25 MR. FRIEDMAN: Ed Friedman

1 Longstreth
2 representing the plaintiffs and the
3 witness. I am with Friedman, Kaplan,
4 Seiler and Adelman.

5 THE VIDEOGRAPHER: Will the court
6 reporter please swear in the witness.
7 B E V I S L O N G S T R E T H, called as
8 a witness, having been duly sworn by a
9 Notary Public, was examined and
10 testified as follows:

11 EXAMINATION BY

12 MR. LOCKWOOD:

13 Q. Mr. Longstreth, you were previously
14 deposed in this case, and in the course of
15 this deposition, there were certain exhibits
16 that were marked. I'm going to put these in
17 front of you and I'll give your counsel a set
18 as well. I may make reference to those
19 previous exhibits.

20 A. Okay.

21 Q. When I do, we'll refer to them.
22 This copy, I'll let you know because I don't
23 expect I'm going to get to Exhibit 5, but
24 Exhibit 5 is a little messed up in this set.
25 that I noticed this morning. But we'll deal

1 Longstreth
2 with that when we have to deal with it, and
3 if we have to deal with it.

4 MR. FRIEDMAN: I don't have a tab
5 5.

6 MR. LOCKWOOD: Exactly.

7 MR. FRIEDMAN: What is Exhibit 5?

8 MR. LOCKWOOD: It's your letter
9 to Mr. Longstreth, and it follows
10 after the Icahn letter that's Exhibit
11 4.

12 MR. FRIEDMAN: Very good.

13 BY MR. LOCKWOOD:

14 Q. Let me introduce myself for the
15 record even though I did so for the
16 videographer.

17 My name is Paul Lockwood, and I'm
18 from Skadden Arps representing the defendants
19 in this action.

20 I'm going to be asking you
21 questions today and in doing so, I'll
22 endeavor to be as clear as I can, but I might
23 fail in that attempt. And if I do so and you
24 do not understand my question, just please
25 speak up, let me know, and I'll try to

1 Longstreth

2 rephrase.

3 A. Okay.

4 Q. If that's okay?

5 A. Uh-huh.

6 Q. Did you do anything to prepare for
7 today's deposition?

8 A. Yeah, I did.

9 Q. What was that?

10 A. I reviewed my expert report and my
11 rebuttal report and Peter Fowler's report.

12 Q. Did you review any other documents
13 besides those three documents?

14 A. No.

15 Q. When were you first asked to
16 provide an opinion rebutting Mr. Fowler's
17 report?

18 A. Well, sometime after the last
19 deposition, but I can't pinpoint the date.

20 Q. So sometime in late April; does
21 that sound right?

22 A. Probably. If that's important, I
23 can find a date.

24 Q. Let me see if I can help pinpoint
25 it for you.

1 Longstreth

2 Did you travel out of the country
3 in late April or early May?

4 A. I did.

5 Q. Do you know when that was?

6 A. Yes, I was gone in London for the
7 last week of April.

8 Q. And had you started on this project
9 of responding to Mr. Fowler's report before
10 that trip?

11 A. Yes.

12 Q. Yes?

13 A. You're helping me recall, because
14 I -- as I recall, I think I told Ed that I
15 would try to write a response on the plane
16 coming back from London.

17 Q. And is that what you did?

18 A. I did.

19 Q. So you were on the airplane with a
20 notepad or a computer drafting a response?

21 A. I didn't take my computer. And I
22 wrote the report on my computer, therefore,
23 what I think I did was to study Mr. Fowler's
24 report on the plane and make notes, and then
25 at some point after I got back to New York

1 Longstreth

2 and had access to my computer, wrenching it
3 away from my wife.

4 Q. Did you use the notes that you had
5 prepared on the plane in drafting your
6 report?

7 A. I did.

8 Q. Did you look at any documents in
9 preparing your second report other than
10 Mr. Fowler's report?

11 A. No. Well, other than my own
12 report, my original report.

13 Q. So you looked at your original
14 report?

15 A. I did.

16 Q. And you looked at Mr. Fowler's
17 report; is that right?

18 A. Yes.

19 Q. There is in your original report a
20 set of materials considered. Are you
21 familiar with that portion of your report?

22 A. Right.

23 Q. Did you go back and look at any of
24 those materials that you had previously
25 looked at?

1 Longstreth

2 **A. No.**

3 Q. There is in Mr. Fowler's report an
4 exhibit entitled "Materials Considered" that
5 lists the documents that he looked at.

6 Are you familiar with that portion
7 of his report?

8 **A. I read his report from cover to**
9 **cover.**

10 Q. And he has an exhibit to his report
11 that has a set of the documents he
12 considered, correct?

13 **A. Right.**

14 Q. Did you go and look at the
15 documents that he considered?

16 **A. No.**

17 Q. The report that you provided first
18 time out, in preparing that report, you
19 didn't rely on any other expert's opinion; is
20 that correct?

21 **A. Rely on any other expert's opinion?**

22 Q. In reaching your own opinion.

23 **A. No, I don't think so.**

24 Q. And there is a double negative, so
25 that means you didn't?

1 Longstreth

2 A. I did not.

3 Q. And in your second report in which
4 you looked at your original report and
5 Mr. Fowler's report, I take it then that you
6 didn't rely on or incorporate any other
7 expert's opinion into this second report?

8 A. No.

9 Q. Have you read any of the other
10 expert reports?

11 A. Yes.

12 Q. Which ones have you read?

13 A. Well, I read the one -- I think I
14 have read them all, but I don't remember all
15 of them at the moment.

16 Q. Did you read any other expert
17 reports besides Mr. Fowler's and your own
18 before writing your second report?

19 A. No, that's the third time you have
20 asked me that. I guess I'm trying to give
21 you the same answer each time.

22 Q. I appreciate that.

23 The plaintiffs have offered some
24 other experts. I'll just give you their
25 names to try to help you in remembering the

1 Longstreth

2 reports.

3 One of their experts is a
4 Mr. Baliban. Are you familiar with
5 Mr. Baliban's report?

6 A. I looked at it; I read it.

7 Q. Did you read that carefully and
8 scrutinize that report?

9 A. I gave it as much care as I thought
10 I needed to give it.

11 Q. And since you didn't rely on it,
12 how much care did you need to give it?

13 A. Well, what in my judgment seems
14 sufficient.

15 Q. Did you give it a quick read or did
16 you read it slowly cover to cover; do you
17 remember?

18 A. I don't remember.

19 Q. What about Mr. Carron's report, he
20 is another expert that the plaintiffs have
21 engaged?

22 A. I remember reading that too about
23 the same way.

24 Q. So meaning that you don't remember
25 how you read it?

1 Longstreth

2 A. I don't remember precisely how long
3 it took me to read it.

4 Q. There is another expert that
5 plaintiffs engaged by the name of Purcell.
6 He has three reports. Have you seen his
7 reports?

8 A. I think so.

9 Q. And do you know whether you spent a
10 significant amount of time reading and
11 analyzing those reports?

12 A. I just gave it the attention that I
13 thought it deserved.

14 Q. And can you remember specifically
15 whether it was something that you read more
16 than once?

17 A. I can't remember.

18 Q. What about Mr. Carron's report, do
19 you know whether you read that more than
20 once?

21 A. I can't remember that either.

22 Q. What about Mr. Baliban?

23 A. Or that.

24 Q. There is also an opinion that the
25 plaintiffs have stating in a report by

1 Longstreth
2 Justice Walsh, former justice of the Delaware
3 Supreme Court.

4 Have you seen that report?

5 **A. I think so.**

6 Q. Do you know whether you read it?

7 **A. I think I read it.**

8 Q. Do you know whether you read it
9 more than once?

10 **A. I don't remember.**

11 MR. LOCKWOOD: We're going to
12 mark as Longstreth Exhibit 6, a copy
13 of the rebuttal expert report of Bevis
14 Longstreth.

15 (Longstreth Exhibit 6, Rebuttal
16 Expert Report of Bevis Longstreth,
17 marked for identification, as of this
18 date.)

19 Q. Mr. Longstreth, is this document
20 that I put in front of you marked as Exhibit
21 6, this is your rebuttal report; is that
22 correct?

23 **A. Yes.**

24 Q. And were you the sole author of
25 this report?

1 Longstreth

2 A. I am.

3 Q. Did you have any input from anybody
4 else?

5 A. I took comments on a draft from Ed
6 Friedman and Gary Friedman.

7 Q. Did you take any notes when you
8 were receiving comments from Mr. Friedman and
9 Mr. Friedman?

10 A. No.

11 Q. In general terms, what is the
12 question or issue that you seek to address in
13 this rebuttal report?

14 A. Well, the Fowler report contained a
15 hypothetical negotiation between Marvel, and
16 I assume it meant the independent directors
17 of Marvel, and the holding companies, and my
18 report addressed the nature and scope and
19 substance of that hypothetical negotiation,
20 and was my effort to reflect a different
21 point of view about how such a negotiation
22 might have progressed. And beyond
23 progressing, how it might have initiated. So
24 that's it.

25 MR. LOCKWOOD: Let's mark as

1 Longstreth

2 Exhibit 7 the rebuttal expert report
3 of Peter Fowler.

4 (Longstreth Exhibit 7, Rebuttal
5 Expert Report of Peter Fowler, marked
6 for identification, as of this date.)

7 MR. FRIEDMAN: Paul, on my
8 Exhibit 6, there is a last page that
9 doesn't seem to be part of the
10 document. It says SSA Global
11 Technologies, Inc.

12 Q. Is that on yours as well?

13 A. I have got the same thing, yeah.

14 MR. LOCKWOOD: Can we agree to
15 pull that off?

16 MR. FRIEDMAN: Done.

17 Q. Mr. Longstreth, Exhibit 7 is the
18 Fowler report that you were rebutting; is
19 that correct?

20 A. Yes.

21 Q. Let me take you to page 2 of
22 Mr. Fowler's report.

23 A. Okay.

24 Q. Under the heading "Assignment", do
25 you see that portion of the report?

1 Longstreth

2 A. Yes.

3 Q. And in the second sentence of
4 Mr. Fowler's report he says, "In providing
5 that rebuttal, I have been asked to assume
6 that the indenture restrictions bound Marvel
7 and to determine how much the Marvel holding
8 companies would have had to pay Marvel after
9 arm's length bargaining at the time of the
10 issuance of the holding company notes to
11 compensate Marvel for these restrictions."

12 Is that the issue that you were
13 responding to in your report?

14 A. Yes.

15 Well, I'm responding to the -- I'm
16 not responding to that question so much as
17 I'm responding to the hypothetical arm's
18 length bargaining that Mr. Fowler inserted in
19 his report.

20 To answer this question, he didn't
21 need to do that, but he did choose to do it.
22 And having done it, it raises questions as to
23 the realism of what he was doing. And it
24 reveals the basis on which he arrived
25 ultimately at an answer to this question.

1 Longstreth

2 And I think that I was requested to address
3 the realism of what he depicted as an arm's
4 length negotiation.

5 Q. If you go to the exhibits that were
6 previously marked at your deposition in
7 April.

8 A. Up here?

9 Q. Yes.

10 I'd like you to take a look at
11 Exhibit 1, which is your original expert
12 report.

13 A. Okay.

14 Q. And I would like to draw you to
15 page 2 of that report.

16 A. Yes.

17 Q. There is a block quote at the top
18 of the page under the heading "Opinion".

19 Do you see that?

20 A. Yes.

21 Q. It begins, "We wish to obtain your
22 expert opinion" --

23 A. Right.

24 Q. -- "with respect to the nature of
25 arm's length bargaining that would have been

1 Longstreth
2 conducted by Marvel with Perelman if Perelman
3 had presented to the independent directors of
4 Marvel a request that Marvel assist and
5 acquiesced in the note transactions as it
6 did."

7 My question is: How is your
8 rebuttal report different in the issue that
9 it analyzes from your initial report and the
10 question that you analyzed in that initial
11 report?

12 A. Well, in the initial report, I
13 focused on the, really, almost exclusively on
14 the second sentence, and then very
15 specifically on the answers to the questions
16 that were put to me in a letter, I think.

17 Q. There is a letter from Mr. Friedman
18 that's Exhibit C to your initial report.

19 A. Yeah.

20 Q. Is that what you're referring to?

21 A. Yeah, I'm trying to find the
22 questions. There were specific questions.
23 And you can see I -- my report starts with
24 the answer to question one.

25 Q. There are seven questions listed on

1 Longstreth

2 pages five and six of Exhibit C to your
3 initial report.

4 Is that what you're referring to?

5 **A. I'm fumbling around here because --**

6 **Q.** You're going beyond the -- it's
7 confusing because you have all the exhibits
8 there. Stay within the first.

9 **A. Okay.**

10 **That's right. Those are the**
11 **questions.**

12 **Q.** If you go to the previous page,
13 page 4 of Mr. Friedman's letter.

14 **A. Okay.**

15 **Q.** "Questions To Be Addressed". Do
16 you see that heading?

17 **A. Yes.**

18 **Q.** And his overarching question to
19 you, at least as I read this letter, is set
20 forth in the topic sentence of that
21 paragraph. "We wish to obtain your expert
22 opinion with respect to the nature of the
23 arm's length bargaining that would have been
24 conducted by Marvel with Perelman if Perelman
25 had presented to the independent directors of

1 Longstreth

2 Marvel a request that Marvel assist and
3 acquiesce in the note transactions as it
4 did."

5 Did you address that?

6 A. Well, that's the same paragraph as
7 I quoted in my answer.

8 Q. And did your initial report, did it
9 address that question posed by the first
10 sentence of the paragraph quoted on page 2 of
11 your report?

12 A. It really did not. It addressed
13 the second general question in that
14 paragraph, and then moved immediately to
15 answer the specific questions.

16 Q. Does your rebuttal report, does it
17 respond to this first question that's posed
18 in the paragraph on page 2 of your report?

19 MR. FRIEDMAN: I object to the
20 form of the question.

21 A. Well, it responds to what Ed
22 Friedman asked me to do, which was to
23 consider the Fowler hypothetical negotiation
24 and comment on the -- on how close to a real
25 negotiation it came.

1 **Longstreth**

2 Q. If you could, I'm going to ask you
3 to look at two things at once. Page two of
4 your initial report and that block quote.

5 **A. Right.**

6 Q. And that first sentence there and
7 Exhibit 7, Mr. Fowler's report.

8 **A. Page 7?**

9 Q. Page 2 of Fowler's report,
10 paragraph 5.

11 **A. I got it, yeah.**

12 **Oh, wait a minute.**

13 Q. The second sentence.

14 **A. Page 5 did you say?**

15 Q. Paragraph 5.

16 **A. I got it.**

17 Q. The second sentence of paragraph 5
18 where he discusses what he was asked to do.
19 And I want you to compare the issue
20 identified in the first sentence of the block
21 quote in your first report and that sentence
22 in the second sentence of paragraph 5 of
23 Mr. Fowler's report, and just tell me if, to
24 your understanding, there is a meaningful
25 difference between the issues described in

1 Longstreth

2 those two sentences?

3 MR. FRIEDMAN: I object to the
4 form of the question.

5 A. If there is a meaningful
6 difference?

7 Q. Well, I'll be up front with you.
8 As I read the first sentence in the block
9 quote in your paragraph that begins "we wish
10 to obtain your expert opinion" --

11 A. Yes.

12 Q. -- I look at that, and I look at
13 Mr. Fowler's report paragraph 5, the sentence
14 that begins "In providing that rebuttal, I
15 have been asked to assume" -- and it goes on
16 from there.

17 I read those two sentences as
18 essentially addressing the same subject
19 matter.

20 Do you read them that way as well?

21 A. No.

22 Q. Why not?

23 A. Well, Mr. Fowler's -- in the
24 assignment given to Mr. Fowler, there is a
25 simple question being asked, which is how

Longstreth

much Marvel holding would have to pay Marvel.

In an arm's length negotiation, what would they pay? And that's the question. That is not the question here.

In this paragraph, which is much, much broader, I'm being asked to give an opinion on the nature of the arm's length bargaining that would have occurred.

I took that paragraph frankly to not be asking me to package a negotiation, but rather to ask me to consider the -- really relying on the second sentence, "What are the considerations that an independent director would take into account in considering this note issuance?"

In other words, in its broadest context, and I never answered the first question directly. I answered the questions that were put to me. That's how I went about this. And I set out a bunch of considerations that I thought a director who was truly independent would have to think about, including, of course, whether there is going to be any negotiation at all. That

1 **Longstreth**

2 **would be the fundamental question.**

3 Q. If you look at Mr. Fowler's report.

4 A. **Yes.**

5 Q. On page 2 in the footnotes, I'd
6 like to draw your attention to footnote 7,
7 which quotes from the Third Circuit's opinion
8 in this case, and first off, have you read
9 the Third Circuit's opinion in this case?

10 A. **I have.**

11 Q. And Mr. Fowler quotes from a
12 portion of that opinion in Footnote 7, which
13 he quotes in the opinion, the Court notes and
14 he quotes, "What the defendants would have
15 had to pay Marvel, after arm's length
16 bargaining, for the restrictions defendants
17 secured without compensation."

18 Do either of your reports address
19 that issue?

20 MR. FRIEDMAN: I object to the
21 form of the question.

22 A. **Yes, I think they do. I mean, they**
23 **don't -- they do not develop a mathematical**
24 **or other kind of formula for arriving at a**
25 **dollar amount. But they do provide insight**

1 Longstreth

2 into what someone with an eye solely to the
3 interests of Marvel and with a fiduciary duty
4 to Marvel and its shareholders would have
5 taken into account, would have considered
6 before even getting to a table to negotiate,
7 and then if they did decide to get to the
8 table, what would have been considered
9 important.

10 All of that is essential
11 information to arrive at an amount if there
12 is going to be an amount to be paid.

13 So I think the answer to your
14 question is yes.

15 Q. If you look at Exhibit 1 to your
16 initial report, which is -- I mean your
17 initial report, which is Exhibit 1.

18 A. My report?

19 Q. Yes, your first report. Page 7 of
20 Exhibit 1 is what I want to draw your
21 attention to.

22 A. Where is Exhibit 1?

23 Oh, my report? Okay, I thought you
24 meant the exhibit.

25 Okay.

1 Longstreth

2 Q. This contains the answers to six
3 and seven in this section?

4 A. Yes.

5 Q. There is a description at
6 paragraph -- the last paragraph on this page.

7 A. Uh-huh.

8 Q. As I read this, of discussions
9 that -- or the process that you would employ
10 if you were a director asked to negotiate
11 with Mr. Perelman as to the terms of this
12 transaction; is that correct?

13 A. Yes.

14 Q. And in it, you reference that the
15 independent directors would retain A,
16 counsel, and B, bankers.

17 Do you see that that was what you
18 indicated it would be responsible for the
19 directors to do before the negotiations; is
20 that right?

21 A. Yeah, this is if they had decided
22 that they were going to become involved in
23 the issuance of the notes to the extent that
24 they were being asked to be involved. And in
25 fact, they were involved as it turned out.

1 Longstreth

2 If they decided to that for a
3 price, they would do that. Then and only
4 then would they sit down with independent
5 counsel and bankers to talk about what that
6 price might be.

7 Q. So it's your view that the
8 directors would reject an approach by Mr.
9 Perelman without first meeting with
10 financial and legal advisors to inform
11 themselves of whether that was the right
12 decision to make or not?

13 A. I don't know whether they would
14 bring in investor bankers before they made
15 that decision. I think they could have made
16 the decision on their own because they are
17 competent directors. They know their
18 business. Presumably they know it a lot
19 better than any banker would know it. What
20 they could use, in my judgment, where I would
21 feel I needed help was when I got down to a
22 negotiation.

23 Q. So in negotiations, if you made a
24 decision to engage in arm's length
25 negotiations, you would want legal advice and

1 Longstreth

2 you would want financial advice as to how to
3 approach that negotiation; is that correct?

4 **A. Yes, I would want professional**
5 **help.**

6 Q. And in your initial report, you go
7 on to say, "These advisors would serve Marvel
8 through its independent directors in
9 determining what kind of benefit, if any, and
10 what size could constitute a reasonable and
11 to the independent directors acceptable quid
12 pro quo for allowing the restrictions to be
13 imposed. I would ask the advisors to develop
14 as many alternative ways of benefitting
15 Marvel adequately as possible."

16 That was your view in your initial
17 report as to how the directors should
18 approach the bargaining; is that correct?

19 MR. FRIEDMAN: That's part of
20 what the report says. What's the
21 question?

22 Q. I'm confirming that was your view
23 in your initial report, correct?

24 **A. Yes.**

25 Q. And in your rebuttal report, before

1 Longstreth

2 you gave your rebuttal report, did you
3 consult with any financial or legal experts
4 in order to analyze or flesh out how the
5 bargaining with Mr. Perelman would have
6 proceeded?

7 **A. No.**

8 **Q. You are a lawyer; is that correct?**

9 **A. I don't practice any more.**

10 **Q. At one time you were a lawyer?**

11 **A. I was at one time. Technically, I**
12 **still am a member of the bar.**

13 **Q. You have never been an investment**
14 **banker; is that correct?**

15 **A. Never been an investment banker.**

16 **Q. And you never held yourself out as**
17 **an expert financial advisor?**

18 **A. That's not correct.**

19 **Q. You have held yourself out as a**
20 **professional financial advisor?**

21 **A. I do right now.**

22 **Q. In connection with providing**
23 **financial advice for companies --**

24 **A. No, in connection with the**
25 **management of money.**

1 **Longstreth**

2 Q. In terms of the work an investment
3 banker would do in analyzing potential or
4 financial structures of a financing
5 transaction, is that something that you would
6 consider yourself expert in?

7 A. Yes. I mean, my experience has
8 been over a long period of time doing
9 financial transactions and giving advice with
10 them. And as you know, legal advice and
11 business advice and financial advice tend to
12 blur and overlap each other. So I think the
13 answer to your question is yes.

14 Q. Well, when you were saying that the
15 board should go out and get expert financial
16 advisors --

17 A. Right.

18 Q. -- do you think that you would be a
19 suitable candidate for the board to hire?

20 A. No. I mean, I didn't have myself
21 in mind. I was thinking of someone that is
22 a -- is not providing the legal input, but is
23 providing the financial analysis and input.

24 Q. You have read --

25 A. In other words, it could be a

1 **Longstreth**

2 **commercial banker, investment banker.**

3 Q. You have read Mr. Fowler's CV
4 that's attached to his report; is that right?

5 A. **I have.**

6 Q. And is Mr. Fowler someone who has
7 the expertise and background that you think
8 would meet minimum qualifications for a board
9 to engage as a financial advisor in a
10 negotiation such as this?

11 A. **I don't remember his**
12 **qualifications.**

13 Q. Well, why don't you take a look at
14 them. It's an exhibit to his report.
15 Exhibit 2.

16 A. **Exhibit 2?**

17 Q. To his report, which is Exhibit 7.

18 A. **I'm looking at -- when he did all**
19 **this advising, where was it?**

20 Q. Credit Suisse, First Boston.

21 A. **Yes, well, he has got the kind of**
22 **experience I'm talking about.**

23 But he would have to be -- to
24 qualify, he would have to be completely
25 independent and undividedly loyal to the